

## **complaint**

Mr C complains that HSBC Bank Plc has wrongly recorded a default about his current account with credit reference agencies. He says he never received a final demand or notice of default. Mr C wants HSBC to remove the default from his credit file.

## **background**

Dates are central to this complaint.

HSBC recorded a default against Mr C's current account with the bank on 9 May 2011. There had been no credits to the account since October 2010. The account was overdrawn and there was no overdraft facility in place. HSBC wrote to Mr C on 4 January, 1 February and 8 March 2011 about the situation. The last letter warned Mr C that a final demand would be issued. As no payment had been received, HSBC issued that final demand on 4 April.

Mr C says he did not receive any of the bank's letters. He was experiencing financial difficulties and had started using a debt management agency. The agency had written to HSBC at the end of March 2011 setting out Mr C's financial position and an offer to repay the amount owed by instalments.

The bank was unsure about the signature on the information provided by the debt management agency so wrote to Mr C asking for his confirmation of the position. He says he replied but HSBC has no record of receiving it.

HSBC's debt collection agents agreed to the repayment proposal in June 2011 and the amount Mr C owed was repaid at the end of 2012. Mr C's credit file now shows the debt as being satisfied. Mr C thinks this is unfair and that the default should not have been recorded in the first place. HSBC was satisfied it had acted correctly so Mr C referred the matter to us.

Our adjudicator asked HSBC for copies of the correspondence it sent to Mr C. It was able to provide details of the contents of all the letters but not a copy of the formal default notice it said had been attached to its final demand letter of 4 April 2011. But the adjudicator was satisfied that, on the balance of probabilities, the bank did enclose the formal notice. All the letters from the bank had been sent to the right address.

As there had been no credits to the account for some six months before the final demand was issued, the adjudicator did not think HSBC had acted incorrectly. In any event, it was clear Mr C would not have been able to repay the amount owed as he was using the services of a debt management agency to help him.

Mr C did not agree with the adjudicator's view so the matter has been referred to an ombudsman for a final decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I do not doubt the strength of Mr C's feelings on this matter. He has repaid the money he owed and is now looking to the future. But he says his plans are being adversely affected by the reference to a default on his credit file. So his concerns are understandable.

But there is very little I can add to what the adjudicator has already said. I consider she set out the position clearly and thoroughly.

There is no dispute Mr C owed the money to HSBC. It had written to him on several occasions. He says he did not receive any of the letters – but this seems strange as he started using a debt management agency to help him deal with his finances, including the money owed to HSBC.

I am satisfied the bank gave Mr C ample notice of its intention to issue a final demand. Like the adjudicator I think it more likely than not that a formal notice of default was enclosed with HSBC's letter of 4 April 2011. That would be normal practice for the bank and I see no reason why it would not follow this in Mr C's case.

The timing of some of the communication between the various parties involved is perhaps unfortunate. The letter from the debt management agency to HSBC at the end of March 2011 may well have crossed with the bank's final demand letter of 4 April. And it seems more likely that HSBC did receive Mr C's confirmation the debt management company was working with him – but the bank probably simply passed this onto its debt collection agents (hence their later agreement to the repayment proposal).

But none of the above detracts from the fact that Mr C owed the money and had not paid anything into his account for several months. So I believe HSBC's decision to record a default was correct and recorded (on 9 May 2011) only after it had written to Mr C on several occasions, including the final demand (on 4 April).

I am aware that Mr C has made a complaint about a payday lender that recorded a default against him at about the same time. That complaint has been considered separately but I point out to Mr C the key difference in the outcome between the two cases is that here I am satisfied HSBC did not act prematurely.

I know Mr C will be disappointed with this, but I do not believe I can fairly direct HSBC to take any action to address his concerns. The default (and therefore Mr C's credit file) accurately records the management of Mr C's account.

### **my final decision**

For the reasons I have given, my final decision is that I do not uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 9 December 2014.

Andrew Davies  
**ombudsman**